

regard is to preserve in its Agreement the opportunity to be able to do so, without being precluded by Verizon.

Issue VII-10 Should Verizon be permitted sufficient time to provision to AT&T loops provided via Integrated Digital Loop Carrier?

I. AT&T's proposal allows Verizon sufficient time to provision to AT&T loops provided via Integrated Digital Loop Carrier-the same it uses to provision them to its own customers. [Issue VII-10]

Verizon's suggestion that AT&T must resort to the Network Element Bona Fide Request ("BFR") process to obtain a loop that is served using Integrated Digital Loop Carrier ("IDLC") (and for which no spare copper facilities are available) is unacceptable.⁵⁷⁸ The BFR process is slow, cumbersome and expensive for AT&T. The BFR process is designed essentially for the provision of UNEs where one-of-a-kind work is involved or infrequent adjustment to existing routine processes is needed—in other words, where circumstances are extraordinary. The provisioning of loops using IDLC, (*i.e.*, loops where one end of the multiplexing function is integrated into the local switch upon which the loop terminates), is neither new nor unusual in Verizon's network.

The principal problem with the BFR process is that it is open ended with respect to both time and costs.⁵⁷⁹ Verizon should not be permitted to further leverage its already substantial competitive advantage concerning IDLC. Verizon's proposal allows it to use loops integrated with its switches so that it may provision its customers almost while the customer is on the line placing its order. Its proposal only allows AT&T to use the BFR process, leaving AT&T unsure if and when it can provide customers with this service and

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While one Verizon witness initially asserted that the BFR process was not applicable in these circumstances, it was finally established that the BFR process did apply. *Id.* at 276.

at what expense. AT&T requires certainty to develop products to serve customers that use integrated digital loop carrier. AT&T should be able to know when it places an order for UNE-L what the provisioning interval will be, so that AT&T can confidently commit to its customers. Of course, this should not result in a “least common denominator” solution where the absolutely longest interval is always quoted.

First, under Verizon’s loop provisioning scenario AT&T will not know until three business days after the order is placed whether the loop can actually be provisioned in the ordinary course of business, under standard provisioning intervals. This could be as much as five calendar days if a weekend intervenes. That means that AT&T is essentially unable to make any commitment to its customer about when service will be implemented for at least 3-5 calendar days. Second, if the ordered loop is IDLC and no spare copper is available, AT&T is thrown into the open-ended BFR process, in which case there is no way to know when, if ever, the loop will be provisioned. At that point the customer might well be inclined to give up on AT&T and order its services from Verizon—which, if the loop is on IDLC, could respond to the customer in “seconds”.⁵⁸⁰

Verizon should be required to have in place a standardized process to quickly, reliably and inexpensively address AT&T’s order for a loop where that loop is currently provisioned using IDLC and where no spare copper facilities are available. Needless to say, Verizon already has such a process in place for itself. Verizon’s loop qualifications systems are capable of identifying such loops, so that Verizon may rely upon its information in returning a Firm Order Confirmation (“FOC”) to AT&T.⁵⁸¹ Therefore,

⁵⁷⁹ *Id.* at 279.

⁵⁸⁰ *Id.* at 295.

⁵⁸¹ *Id.* at 282-4.

unlike what AT&T potentially faces, Verizon should not be returning a FOC for a loop served by IDLC only to subsequently unilaterally re-start the provisioning clock with an interval of unknown but certainly much longer length, simply because Verizon subsequently “found” that no copper was available or that it was unwilling to re-arrange the loop to UDLC.

Verizon suggests that additional time is needed for an engineer to determine whether there are alternative ways to satisfy the CLEC order in the event that the pre-qualification databases indicate that the order cannot be fulfilled.⁵⁸² AT&T has no objection to such additional steps, but does object to the open-ended process BFR that Verizon proposes to AT&T—but not to itself—for the exploration of alternatives. The legal standard under the Act is parity. AT&T simply asks that the response time for its orders be no less than the response times that Verizon enjoys for its customers.⁵⁸³

Resale

Issue V-10 – Resale of Vertical Features – Must Verizon offer vertical features for resale on a stand-alone basis?

Section 251(c)(4) requires Verizon to make available for resale any retail telecommunications service.⁵⁸⁴ The FCC has prohibited Verizon and other ILECs from imposing discriminatory conditions on the resale of retail services, finding that “resale restrictions are presumptively unreasonable.”⁵⁸⁵ The vertical features Verizon offers are, without question, “telecommunications services” within the meaning of the

⁵⁸² *Id.* at 285-9.

⁵⁸³ *Id.* at 291.

⁵⁸⁴ *See generally*, AT&T Exh. 4 at 7-10.

Telecommunications Act, and thus properly subject to general resale obligations imposed by the Act.⁵⁸⁶

Verizon does not contend that vertical services are not telecommunications services. Rather, it asserts that vertical services are not offered at retail on, as they put it, a stand-alone basis.⁵⁸⁷ Verizon concedes, however, that not only is it technically feasible to resell vertical features, but that they are in fact already being resold by Enhanced Service Providers.⁵⁸⁸ Thus, unlike in New York, where PSC ruled against stand-alone resale of vertical services reasoning that it was “not at all clear that it is technically feasible. . .” the record here proves that it is.⁵⁸⁹ Any acceptance of Verizon’s argument here, then, would effectively sanction Verizon’s use of service bundling to prevent effective resale.

It is not disputed that Verizon’s dial tone line service is available for purchase by retail customers on a stand-alone basis – that is, without the purchase of Verizon’s monopoly vertical features.⁵⁹⁰ In fact, Verizon witness Maher acknowledged that that is how Enhanced Service Providers are able to resell vertical features – by relying on

⁵⁸⁵ *First Report and Order*, CC Docket 96-98, Aug. 8, 1996, ¶939.

⁵⁸⁶ *See, e.g.*, Application By Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Public Utilities Commission of California, Application 00-05-053, Opinion (Oct. 5, 2000) (the “California Resale Opinion”), at 11.

⁵⁸⁷ *See* Verizon Response to Unresolved Issues, at 196 (Issue V-10); Rebuttal Testimony on Non-Mediation Issues of Josephine Maher, August 17, 2001, at 2.

⁵⁸⁸ Tr. at 934-35. *See also* Direct Testimony on Non-Mediation Issues of Josephine Maher, July 31, 2001, at 4; Rebuttal Testimony on Non-Mediation Issues of Josephine Maher, August 17, 2001, at 2.

⁵⁸⁹ *See* Case No. 01-C-0095, NY Arbitration Award, at 21.

⁵⁹⁰ *See* Verizon-VA Tariff No. 202, Local Exchange Service.

Verizon's provision of the dial tone.⁵⁹¹ Since retail customers can purchase Verizon's dial tone service without purchasing Verizon's monopoly vertical features, Verizon's insistence that AT&T - as a reseller - purchase both local dial tone and vertical features can not withstand scrutiny. It is patently unreasonable - both under general competitive principles and under § 251(c)(4) - for Verizon to require AT&T to purchase for resale services that AT&T does not want (dial tone) as a condition of purchase for resale of monopoly services that AT&T does want (vertical features). Indeed, this is precisely the holding of the California Public Utilities Commission. California Resale Opinion, at 11. ("We concur in the [ALJ's] determination that Section 251(c)(4) requires the resale of vertical features, without purchase of the associated dial tone. Vertical features meet the Act's requirement of services offered at retail to end-user customers who are not telecommunications carriers.")⁵⁹²

Verizon thus bears the burden under the Commission's implementing regulations of proving that the restriction it seeks to impose in the contract on the resale of vertical features - *i.e.*, that they only will be resold with Verizon's dial tone line service - is both reasonable and narrowly tailored.⁵⁹³ This is a burden which Verizon cannot meet.

Verizon acknowledges that it offers its vertical features to Enhanced Service Providers for resale. Not only are vertical features not included in the rate for dial tone,

⁵⁹¹ Tr. at 936.

⁵⁹² Other state Commissions have reached the same conclusion. *See, e.g.*, Complaint By AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility-Essential Office Packages, Texas P.U.C. Docket Nos. 21425 and 21475, SOAH Docket No. 473-99-2071, Order (issued December 19, 2000) (the "Texas Resale Order"), at 7.

⁵⁹³ *See* 47 C.F.R. § 51.613(b).

i.e., basic local service, but the vertical features themselves are separately tarified.⁵⁹⁴ It is thus clear that Verizon is not being required to disaggregate a genuinely bundled service, but is instead simply being asked to make available for resale a retail service that is listed and priced separately in Verizon's retail tariffs. *See* California Resale Opinion at 25. Accordingly, the Commission should reject Verizon's limitations on the resale of vertical features, as found in §§ 12.8.1 and 12.8.5 of Verizon's Proposed Interconnection Agreement.

PRICING TERMS & CONDITIONS

Issue I-9, I-2 - Price Caps on CLEC Services - Can Verizon limit or control rates and charges that AT&T may assess for its services, facilities and arrangements?
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Verizon should not be allowed to limit or control AT&T's rates and charges in any respect. Section 251(c)(6) of the Telecommunications Act of 1996 exclusively imposes on incumbents certain obligations concerning rates for services provided to CLECs. The Act does not contemplate limiting a CLEC's pricing flexibility nor is there any basis for creating such a limitation, for obvious reasons. AT&T does not wield the dominant local exchange market power that Verizon does. Thus, there are no such limitations, nor is there a need for any - most especially not those dictated by the incumbent/purchaser.

Verizon's attempt to impose such caps unilaterally removes the market mechanism as a method to control prices and eliminates the authority of regulatory bodies over rates and charges. It contends that such a limit is "fair" because Verizon is somehow a "captive customer" of CLECs and has no alternative but to purchase from CLECs the

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See Verizon-VA tariff No. 203, General Service, Custom Calling Features.

services and facilities needed to interconnect.⁵⁹⁵ However, at the hearing Verizon witness Daly conceded that Verizon “has other alternatives” in how it delivers traffic to CLECs, a point that hardly needed to be made in light of Verizon’s size and the reach of its network.⁵⁹⁶ Moreover, the rates concerning which Verizon contends it needs some restraints on CLECs’ pricing power already are subject to the jurisdiction of the Commission⁵⁹⁷ and thus an avenue of relief is available to Verizon if it feels aggrieved by a particular rate. The remedy AT&T asks is simple: preclude Verizon from imposing unnecessary and illogical price caps on AT&T or otherwise controlling AT&T’s rates for services and facilities.⁵⁹⁸

Issue III.18 - <i>Tariffs v. Interconnection Agreements</i> - Should tariffs supercede interconnection agreement rates, terms and conditions?
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AT&T and Verizon agree that terms and conditions of the interconnection agreement will prevail over any tariff that Verizon may file. The parties also agree that Verizon’s obligation to file tariffs carries with it certain obligations that, practically speaking, need to be reflected in an interconnection agreement and the already-agreed-upon contract language recognizes that obligation.⁵⁹⁹ Finally, the parties are also fairly well in accord that if the Commission establishes new rates in a future proceeding, the

⁵⁹⁵ See Verizon Exh. 7, at 7.

⁵⁹⁶ Tr. at 2117-18.

⁵⁹⁷ Tr. at 2110-12, 2118-19.

⁵⁹⁸ This is particularly compelling with respect to limitations proposed by Verizon on transport charges for traffic from a Verizon POI to an AT&T POI in any given LATA. See Verizon proposed § 4.2.7 limiting transport rates to a non-distance sensitive entrance facility rate. Such a proposed limit on AT&T’s transport rate would have far-reaching effects on AT&T’s network architecture and costs.

⁵⁹⁹ See Section 20 of the proposed interconnection agreement.

outcome would determine the appropriate rates for the interconnection agreement,⁶⁰⁰ and the contract also reflects that approach.⁶⁰¹ The lone dispute now lies over whether Verizon may, in exercising its rights and obligations to file tariffs, unilaterally alter a rate contained in the contract.⁶⁰²

Verizon maintains that, apparently at any time, it can file a tariff changing any rate ordered by this Commission in this proceeding and thus effectively change the rates governing the parties' relationship.⁶⁰³ This raises two substantial problems. First, it effectively transforms the rates decided in this proceeding into little more than placeholders, until Verizon determines to impose a different rate. Second, it requires AT&T and other CLECs to become "tariff police" who must scour every tariff filing Verizon makes with the Virginia SCC – and Verizon routinely files a great number of tariff revisions – to root out any page or paragraph buried therein which may impact

⁶⁰⁰ See Tr. at 2046. Any such proceeding, by its very nature, would give AT&T and other CLECs appropriate advanced notice and a meaningful opportunity for comment and participation.

⁶⁰¹ See Section 20.2 of the proposed interconnection agreement.

⁶⁰² See generally, Direct Testimony of Frederik Cederqvist at 3-6; Rebuttal Testimony of Frederik Cederqvist at 1-4. This is not the situation confronted by the Commission in *In the Matter of Bell Atlantic-Delaware, Inc., v. Global Naps, Inc.*, File No. E-99-22, FCC 99-381, 15 FCC Rcd. 12,946, *aff'd*, 15 FCC Rcd. 5997. There the parties were "unable to determine whether [a] tariff is actually applicable" (*id.* at para. 21) to the matter in dispute. Here, by contrast, AT&T and Verizon do not disagree that a tariff affecting the interconnection agreement can be filed and approved and can thus become "actually applicable." The dispute centers on Verizon's exercise of its tariff filing obligations, not on the "contingent and unclear applicability of [a] tariff" (*id.* at para. 22). Instead of tariff applicability, the question here involves whether Verizon should have the ability to manipulate the applicability of its tariffs to the detriment of CLECs and CLEC interconnection agreements. The Commission in *GNAPS* answered that question resoundingly in the negative ("Using the tariff process to circumvent the section 251 and 252 processes cannot be allowed." *Id.* at para. 23) and should reaffirm that holding here.

⁶⁰³ See Tr. at 2048.

CLECs' interests, or else risk having such tariff amendment become effective as filed with no further regulatory review.⁶⁰⁴

For the interconnection agreement to have a meaningful and durable commercial purpose, AT&T must be able to rely on the rates established by the Commission and contained in the contract, and on the effectiveness of Commission oversight of any changes. Otherwise, the decisions being made in this proceeding, as well as the resulting interconnection agreement, become largely meaningless.

AT&T acknowledges that Verizon should have the right to file tariffs to supplement the contract, and at an appropriate time and in an appropriate manner, to supplement or change the applicable rates. But there must be some restraints on Verizon's exercise of that right. Verizon files a large number of tariffs with the Virginia State Corporation Commission, and it is unreasonable to expect that AT&T, or any other CLEC for that matter, can devote the substantial resources required to obtain and review all those various filings.⁶⁰⁵ The Commission should thus ensure that Verizon not be able,

⁶⁰⁴ If no challenges are made, the Virginia SCC, like virtually every other state commission, has the discretion to allow filed tariffs to become effective as filed with no further action required from the SCC or the carrier. Moreover, the Virginia Commission has already ruled that it will look to the FCC and the arbitration of the interconnection agreement to govern the pricing of UNEs in Virginia. In rejecting AT&T's argument that Verizon's proposed alternative regulation plan was premature because UNE rates had not yet been set, the SCC ruled that "[t]he concerns raised by AT&T and Cavalier are being addressed in other forums. AT&T and Verizon Virginia are currently having interconnection issues arbitrated before the Common Carrier Bureau of the [FCC] which includes UNE rates for Verizon Virginia." *Application of Verizon Virginia Inc. For approval of its Plan for Alternative regulation*, Case No. PUC010032, Order Approving Plan (May 15, 2001) at 3-4.

⁶⁰⁵ AT&T's offer of an accommodation on this point was rejected by Verizon. Specifically, AT&T would be willing to permit Verizon to amend interconnection rates via tariff filing if (1) Verizon agreed to serve notice of any such filing directly upon AT&T's designated representative (electronically where available), and (2) that notice indicated, in clear language on the cover page, that **"THIS TARIFF FILING CONTAINS PROPOSED CHANGES WHICH, IF APPROVED, WILL IMPACT AT&T'S RIGHTS AND OBLIGATIONS UNDER ITS INTERCONNECTION AGREEMENT WITH VERIZON-VIRGINIA."** See, Direct Testimony of Frederik Cederqvist at 6; Rebuttal Testimony of Frederik Cederqvist at 3.

by the mere filing of a tariff, to negate the established and effective rates contained in the interconnection agreement. The Commission, thus, should direct that no rates, terms or conditions of the Interconnection Agreement may be amended by tariff filing unless Verizon can demonstrate that AT&T had actual, direct and meaningful notice of the filing that accorded AT&T an opportunity to protect its interests.

Issue VII-12 - Should the Parties' interconnection agreement be burdened with detailed industry billing information when the Parties can instead refer to the appropriate industry billing forum?

In contract provisions proposed by AT&T concerning the parties' mutual obligations concerning Carrier Information Codes (CIC) and billing records, Verizon perceives a tension between contract terms and the guidelines of the Ordering and Billing Forum (OBF). While as a general matter, AT&T does not dispute that OBF guidelines serve to resolve industry-wide billing concerns and issues, there are certain billing requirements that can also appropriately be the subject of contract terms. Schedule 5.6 contains some such terms, and Verizon does not dispute the propriety of those terms being included in the interconnection agreement, notwithstanding the OBF guidelines. AT&T suggests that the provision of CICs, and the obligation to provide pseudo-CICs in the absence of a CIC, is another such term that should be included in the contract.

Verizon claims that OBF guidelines address this issue and can evolve as the industry's needs in the exchange of CICs evolve. In this respect, Verizon argues, abiding by OBF guidelines will be less restrictive and more flexible than binding contract terms. That benefit, however, is also a problem: OBF guidelines are just that – guidelines only, not contractual obligations. While it generally is in the interest of all parties to abide by guidelines concerning ordering, billing, provisioning and exchange of information about

services and related matters, including CICs, there is no obligation to do so, and a party that opposes or disagrees with a particular guideline can choose not to. Obligating both parties to exchange CICs facilitates the billing process and should be reflected in more than a guideline. Moreover, contract terms, including those that affect the exchange of billing detail, need not remain immutable if circumstances change between the parties or within the industry. If the practice regarding the exchange of CIC changes, the contract can certainly be amended to reflect that.

AT&T needs the assurance through contract terms that Verizon will implement certain obligations concerning the exchange of CICs for billing purposes.⁶⁰⁶ Verizon's reliance solely on the guidelines of the OBF should be rejected and AT&T's contract provisions regarding these billing issues should be adopted.

⁶⁰⁶ The outcome of the NY arbitration on this issue is not inconsistent with this position. While the Commission did find that the parties should implement OBF guidelines for replacing psuedo CICs with OCNs, it also found that "Verizon has a duty to provide carriers CIC codes that contain the billing information they need." Joint Petition of AT&T Communications, etc., et al., Case No. 01-C-0095, at 52. Thus, while the parties in NY will look to OBF for some guidance, the interconnection agreement will also contain provisions detailing Verizon's obligations. AT&T urges that the outcome here be no different.

GENERAL TERMS & CONDITIONS

Issue I-11 - OSS Access - May Verizon summarily terminate AT&T's access to OSS for AT&T's alleged failure to cure its breach of obligations concerning access to OSS per Schedule 11.6

Verizon contends that it should be able to suspend a CLEC's right to use its OSS in order to protect against CLEC misuse. It offers no justification, other than its *ipse dixit* about the need to protect its systems, for the right to summarily and unilaterally take such action, and it ignores the fact that it has adequate remedies available to cure any alleged breach by AT&T or any CLEC of access to its OSS.⁶⁰⁷ Moreover, Verizon's proposal to retain the right summarily to terminate such access is overbroad and overreaching. Such a draconian remedy could produce adverse consequences to AT&T's ability to conduct business that far surpass any conceivable harm that would accrue from any breach by AT&T of the use of Verizon's OSS. As acknowledged by Verizon witness Langstine, Verizon's summary right to terminate CLEC access to OSS could result in the denial of access to all systems comprising Verizon's OSS even if the breach allegedly committed by a CLEC concerned only one such system.⁶⁰⁸ AT&T has more than sufficient incentive to protect Verizon's OSS without the threat of being unable to conduct business altogether.

Verizon's only rationale for such an extreme provision and for the nearly unfettered right to exercise it is that the importance of OSS to the operation of Verizon's network makes it "absolutely appropriate to provide a remedy concomitant with the

⁶⁰⁷ AT&T Exh. 4, at 6-7.

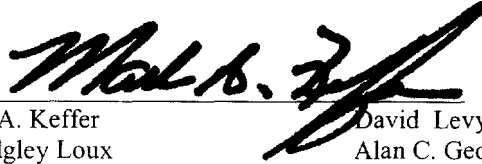
⁶⁰⁸ Tr. at 2566.

seriousness of the breach.”⁶⁰⁹ Verizon thus concedes that it does indeed have other less punitive remedies available; it also acknowledges that access to OSS is critical not just to the operation of Verizon’s network, but “as well [to] the networks of all CLECs.”⁶¹⁰ CLECs thus have every incentive to prevent breaches of access to, and misuses of, OSS, not to commit them. Verizon’s attempt to exercise such a punitive and extreme remedy should be rejected.

⁶⁰⁹ Verizon Exh. 22, at 9.

⁶¹⁰ *Id.*

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